IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.284/1998

Shri Xavier Mascarenhas alias
Xavier Manual Mascarenhas,
resident of Bhatiwada,
Morjim, Pernem, Goa. .... Petitioner.

V/s.

1. Miss Joyce Lisboa,
resident of Rajwada, Mapusa, Goa.

2. Mrs. Gladya de Costa,
resident of H.Qrs.M.T.S.Div.
C/o.99, P.O. Nagaland, India.

3. Ina de Costa,
resident of H.Qrs. M.T.S. Div.
C/o. 99, P.O. Nagaland, India.

4. Mamlatdar of Pernem,
with his office at Pernem, Goa.

5. The Additional Dy. Collector,
Mapusa Sub-division with his
Office at Mapusa, Goa.

6. The Administrative Tribunal Goa,
with its Office at Panaji, Goa. .... Respondents.

Mr.S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the petitioner.

Mr.M.S. Usgaonkar, Senior Advocate with Mr. S. Sardessai, Advocate for respondents no.1 to 3.

CORAM : P.V. HARDAS, J.

DATE : MARCH 21, 2003.

ORAL JUDGMENT

The present petition raises a challenge to the Judgment dated 5.3.1998 passed by the Administrative Tribunal, Goa in Tenancy Revision Application No.41/96,

by which the Administrative Tribunal dismissed the revision filed by the petitioner and confirmed the order passed by the Addl. Dy. Collector, Mapusa dated 28.3.1996.

2. The facts, in brief, as are necessary for the decision of this petition, are set out hereunder :

It is not disputed before me that the present respondents/landlords had filed a Civil Suit seeking eviction of the petitioner who, according to the respondents, was an agricultural tenant, and whose tenancy was terminated. During the pendency of the proceedings, by virtue of the 5th Amendment, the tenant became a deemed purchaser and accordingly, the learned Civil Judge, before whom the suit was pending, recorded a finding that he had no jurisdiction and dismissed the suit. Learned lower appellate Court concurred with the Judgment of the learned Civil Judge in an appeal. The matter was carried to the High Court in Second Appeal and the learned Single Judge of this Court held that since the Civil Court had no jurisdiction and, therefore, the Civil Court could not have dismissed the suit for want of jurisdiction and instead directed the Civil Court to return the plaint to the plaintiff for presenting it to an appropriate forum, which would be the forum under the Agricultural Tenancy Act.

Undisputedly, till now the respondents/landlords have not initiated any proceedings for eviction of the petitioner/tenant.

3. On 18.2.1993, the petitioner had filed an application for fixation of the price of the land of which he became a deemed purchaser under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. During the pendency of the said proceedings, the petitioner filed an application which is annexed to this petition at page 33, apparently dated 27.9.93, requesting the Mamlatdar of Pernem before whom the proceeding for fixation of the price was pending, namely case No.MAM/PER/MORJIM/IT/1/93, to confine the inquiry to find out the area of the property and the price payable thereof. In other words, it was stated by the petitioner that since the status of the petitioner, as tenant, was admitted by the respondents in the proceedings before the Civil Court, the Mamlatdar need not hold a detailed inquiry to determine the status of the petitioner, but should confine the inquiry to find out the area of the property and the price payable for the said agricultural land.

4. The respondents/landlords by their reply objected to the prayer made in the application by the petitioner and stated that the respondents shall file appropriate proceedings for eviction of the

petitioner/tenant. It appears that the leaned Mamlatdar was also called upon to decide a similar question and had decided the same by his order dated 1.9.1993. In the order dated 1.9.1993, the learned Mamlatdar had come to the conclusion that in view of the presumption available to the record of rights under Form I & XIV, it was for the present respondents to rebut the presumption and establish that the entries in Form I & XIV were not true and accordingly, he came to the conclusion that the respondents will have to establish that the petitioner is not a tenant and, therefore, directed the respondents to lead evidence first to prove that the petitioner is not a tenant.

5. Be that as it may, the learned Mamlatar by his order dated 23.6.1994, rejected the application filed by the petitioner, but, however, directed the respondents to lead evidence first. Thus, the respondents were directed to lead evidence to establish that the petitioner was a tenant of the respondents. The learned Mamlatdar was guided principally by the order dated 1.9.1993 and held that he could not review his earlier order. The respondents being aggrieved by the order of the Mamlatdar dated 1.9.1993, preferred tenancy revision application before the Dy. Collector at Mapusa, Goa. Learned Addl. Dy. Collector by his Judgment dated 28.3.1996 allowed the revision and

quashed and set aside the order of the Mamlatdar dated 1.9.1993, directing the respondents to lead evidence to prove that the petitioner is not a tenant. The learned Addl. Dy. Collector while allowing the revision, has held that as per the Indian Evidence Act, a party could not be called upon to prove a negative fact and has held that it was for the petitioner to establish and prove that he was the tenant of the landlord.

6. The petitioner being aggrieved by the order of the learned Dy. Collector, Mapusa carried tenancy revision application to the Administrative Tribunal, Panaji Goa. Learned Member of the Administrative Tribunal proceeded on the footing that under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (‘the Tenancy Act’ for short), the Mamlatdar could only presume to be true the entries in the record of rights prepared in the prescribed manner under the provisions of the Tenancy Act. The relevant provision reads thus :

> "7. Question of tenancy. – If any question arises whether any person is a (or was) tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question.

> ["in any such enquiry, the Mamlatdar shall presume that any statement as to the existence of a right of tenancy in a record of rights prepared in the prescribed manner under and in accordance with the provisions of this Act, is true"] ".

The learned Member of the Administrative Tribunal came to the conclusion that the presumption available under Section 105 of the Goa, Daman and Diu Land Revenue Code, 1968 in respect of the correctness of the entries in the record of rights and the certified entry in the Register of Mutation would not be available in an inquiry which was conducted under the provisions of the Tenancy Act. On this premise, the learned tribunal came to the conclusion that it was for the petitioner to lead evidence to establish that he was a tenant and concurred in principle with the order passed by the learned Addl. Dy. Collector. The effect of the order of the Administrative Tribunal, therefore, was that the petitioner was to lead evidence as no presumption of entry as is available under Section 105 of the Land Revenue Code would be available in the inquiry conducted by the Mamlatdar under the Tenancy Act.

6. Mr. Lotlikar, learned Senior Counsel, appearing on behalf of the petitioner has rightly taken

exception to the finding recorded by the learned Member of the Administrative Tribunal. He has urged before me that the presumption under Section 105 of the Land Revenue Code, would be available in an inquiry to be conducted by the Mamlatdar under the provisions of the Tenancy Act. I have also heard Mr. M.S. Usgaonkar, learned Senior Counsel appearing for the respondent.

7. According to me, at this stage, it is not necessary for this Court to decide whether the presumption under Section 105 of the Land Revenue Code stands eclipsed by the provisions of Section 7 of the Tenancy Act. The inquiry before the learned Mamlatdar has not yet commenced and the proceedings are pending before the Mamlatdar since 1993. The learned Mamlatdar, while deciding the question of the tenancy, shall also address the issue, if it arises, whether the presumption in respect of the entries as is available under Section 105 of the Land Revenue Code is applicable to the proceedings under the Tenancy Act, independent of the observations which are made by the learned Member of the Administrative Tribunal. The Mamlatdar should not, in any manner, be influenced by the observations made and if the occasion arises, he shall independently decide the question in the said proceedings.

8. The findings of the learned Addl. Dy.

Collector and the learned Administrative Tribunal that the petitioner to lead evidence to establish that he is a tenant, and it would then for the respondents to lead evidence to rebut the stand of the petitioner cannot be faulted with. I see no reason for interference in the findings of fact recorded by the two authorities below that the petitioner shall lead evidence to establish that he is a tenant. Even otherwise, according to me, the petitioner would not be prejudiced in any manner if he is called upon to lead the evidence. It is needless to mention that the petitioner can certainly take advantage of the pleadings of the respondents in the Civil Court in order to establish that he is a tenant. I may reiterate once again that the Mamlatdar while deciding the application filed by the petitioner should not, in any manner, be influenced by any of the observations made either by the learned Member of the Administrative Tribunal or by the learned Addl. Dy. Collector.

9. Since the application is pending before the Mamlatdar of Pernem right from the year 1993, it would be expedient in the interest of justice to direct the Mamlatdar to decide the said application as expeditiously as possible and preferably within six months from the date of receipt of order of this Court. It is needless to mention that the parties to the

proceedings shall co-operate with the learned Mamlatdar in the expeditious disposal of the proceedings. The parties to appear before the Mamlatdar of Pernem on 16th April, 2003 at 10.30 a.m.

10. In view of the above, the Writ Petition is dismissed with the aforesaid direction, with no order as to costs. Rule discharged.

P. V. HARDAS, J.

ssm.